S.B.CIVIL WRIT PETITION NO.7783/2007.
(Sahab Ram Vs. State of Rajasthan & Ors.)

Date of order : 11th December 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Vijay Jain, for the petitioner.

...

BY THE COURT:

Heard learned counsel and perused the material placed on record.

By way of this writ petition, the petitioner, working on the post of Teacher Gr.III seeks to question the order dated 05.10.2007 (Annex.1) whereby he has been transferred from Government Primary School, 5 NGR, Hanumangarh to Government Primary School, 4-5 NWD, Nohar and the order dated 15.10.2007 (Annex.2) passed by the Rajasthan Civil Services Appellate Tribunal, Jaipur dismissing his appeal (No.2443/2007) against the said transfer order.

It has strenuously been contended by the learned counsel for the petitioner assailing the orders aforesaid that the order of transfer of the petitioner has been issued without any administrative exigency and without application of mind; that the State Government is not competent to pass such transfer order, which could have been made only by the Panchayat Samiti concerned on the recommendations of the District Establishment Committee; that the petitioner has been transferred only in order

to accommodate the respondent No. 4; that wife of the petitioner is serving at village Jhandwala Sikhan, Tehsil Sangaria, Panchayat Samiti Hanumangarh and transfer of the petitioner remains contrary to the policy of the State Government to retain working spouse at the same place; that that there had not been any reason for transferring the petitioner in the midst of academic-session and if forced upon, the petitioner would suffer injury and inconvenience; and that the Tribunal has erred in summarily rejecting the appeal without considering the substance of the submissions made on behalf of the petitioner. Learned counsel has referred to and relied upon the decision of this Court in the case of John Virendra Kumar Vs. State of Raj. & Anr.: 1996 DNJ (Raj.)440, Dr. Ajay Kumar Sharma Vs. State of Rajasthan & Ors.: 2003(3) SLR 582 and Tejshree Ghag etc. Vs. Parashuram Patil & Ors. : AIR 2007 SC 2141.

Having examined the material placed on record and having given a thoughtful consideration to the submissions made by the learned counsel for the petitioner, this Court is clearly of opinion that this writ petition remains totally bereft of substance and does not merit admission.

It remains trite in law that, ordinarily, the order of transfer is not required to be interfered with unless is challenged on the ground of mala fide or violation of any statutory requirement. No such case is made out so as to call for interference in this writ petition.

The contentions sought to be urged herein on competence of the State Government to issue the transfer order deserve to be rejected following detailed orders made by this court on 19th November 2007 in a batch of similar petitions led by CWP No. 7341/2007 (Ram Lal Bishnoi Vs. State of Rajasthan & Ors) and in another case, CWP No.7374/2007 (Meena Sharma Vs. State of Rajasthan & Ors). While rejecting similar nature contentions against competence of the State Government to issue such transfer orders from one Panchayat Samiti to another, this court has observed and held on the operation of the relevant provisions of the Rajasthan Panchayati Raj Act 1994 and Rajasthan Panchayati Raj Rules 1996 that,-

> "Sub-section (8-A) of Section 89 has been inserted by way of amendment to the Act of 1994 with a non obstante clause overriding the provisions of Sub-section (8) of Section 89. Thus, the powers of the State Government to transfer any member of service from one Panchayat Samiti to another within or outside the district, from one Zila Parishad to another, from one Panchayat Samiti to Zila Parishad or from one Zila Parishad to Panchayat Samiti have their overriding effect on any other power of transfer with any other authority. Operation of such wide powers finds incorporation in the scheme of the Rules of 1996 too. The State Government may also stay the operation of, or cancel, any order of transfer made under Sub-section (8) of Section 89 whereby appointment by transfer is envisaged to be made after consultation with Pradhans or Pramukhs of Panchayat Samitis and Zila Parishads, as the case may be, whereto and wherefrom such transfer is proposed to be made.
>
> A look at the Rules aforesaid and the source of wide powers of State Government that is, Sub-section (8-A) of Section 89 of the Act of 1994, makes it clear

> that it is within the competence of the State Government, inter alia, to transfer an employee like the petitioner from one Panchayat Samiti to another Panchayat Samiti within the same District or outside the District.
>
> As noticed, wide powers of the State Government flowing from Sub-section (8-A) of Section 89 have their overriding effect and are not whittled down by any other provision in the Act nor could be read circumscribed by any provision in the Rules. The powers of the State Government being untrammelled and unaffected by any other power with any other authority to issue transfer order, this Court is clearly of opinion that the transfer orders of the present nature as issued by the State Government, transferring the employees from one Panchayat Samiti to another Panchayat Samiti, do not suffer from want of authority nor could be said to have been issued in violation of any statutory condition or requirement."

In view of the decision aforesaid, the contentions against competence of the State Government to issue the order of transfer of the petitioner from one Panchayat Samiti to another deserve to be rejected.

So far accommodation of respondent No.4 is concerned, an order made for the purpose of accommodating another employee cannot be pronounced as illegal or bad on that count alone as observed by the Hon'ble Supreme Court in the case of Shilpi Bose Vs. State of Bihar: AIR 1991 SC 532 that,-

> "If the competent authority issued transfer orders with a view to accommodate a public servant to avoid hardship, the same cannot and should not be interfered by the court merely because the transfer order were passed on the request of the employees concerned."

Reference to the decision of this Court in Dr. Ajay Kumar Sharma's case is not apposite to the facts of the present case. In the said case, the transfer order made as back as on 10.08.2000 had already lost its efficacy with the efflux of time; and the petitioner was transferred only in order to accommodate the respondent No.3; and this Court, in the totality of the facts, has held the transfer order a malafide one while deciding the writ petition on 27.08.2002. The said decision cannot be read laying down a rule of universal application that an order of transfer made for accommodating another employee is required to be quashed on that count alone. Noteworthy it is that while deciding the said case, this Court left it open for the authorities to make further transfer order of the petitioner in future, if so required in the administrative exigency.

Reference to Tejshree Ghag's case (supra) is entirely misplaced. In the said case, the Hon'ble Supreme Court found that because of the transfers, the employees were likely to be deprived of their existing rights. The Hon'ble Supreme Court has observed,-

> "Transfer may even be incidental to the conditions of service, but thereby nobody can be deprived of his existing right. Existence of a power and exercise thereof are two different concepts. An Executive power in absence of any statutory rules cannot be exercised which would result in civil or penal consequences. Such exercise of power must, moreover, be bonafide. It cannot be done for unauthorized purpose. An Executive order passed for unauthorized purpose would amount to malice in law. An order of transfer cannot prejudicially affect the status of an employee. If orders of transfer substantially affect the status of an employee, the

> same would be violative of the conditions of service and, thus, illegal. Transfers must be made to an equivalent post."

It is not the case of the petitioner that by the impugned transfer order, anything has been brought about to his prejudice in his status and service conditions. The present one is a case where the employee has been transferred in administrative exigency from one place to another without affecting his service conditions and status. The decision in Tejshree Ghag's case (supra) has no application whatsoever to the present case.

Merely because wife of the petitioner is said to posted at the particular place that does not invest the petitioner with any indefeasible right to continue at the same place of posting. The guidelines or policies of the Government are not of statutory conditions that any variance therefrom would ipso facto render a transfer order illegal. Ultimately, as to who should be transferred where is the matter for the appropriate authority to decide as pointed out by the Hon'ble Supreme Court in the case of S.L.Abbas Vs. Union of India: AIR 1993 SC 2444.

The decision of this Court in the case of John Virendra Kumar (supra) as relied upon by the learned counsel for the petitioner cannot be read as laying down any general rule that a transfer order whereby the husband and wife are obliged to work at different places, on that count alone is liable to be struck down as violative of Article 21 of the Constitution of India. Noteworthy it is that in the said decision, this Court pointed out that transfer is

an incidence of service and administrative exigencies can be ascertained only by the transferring authority and not by the Court in exercise of its powers under Article 226 of the Constitution of India. This Court rejected the writ petition in limine, however with observations that if a representation is made by the incumbent, the same shall be considered by the transferring authority keeping in view that living of husband and wife together if both of them are employed as far as possible is an essential ingredient of dignified life as enshrined under Article 21 of the Constitution of India. This Court then made observations that,-

> "8. It is true that assessment of possibility to keep husband and wife together at one place is within the exclusion (sic) domain of transferring authority but in order to make such transfer order objective the transferring authority is under legal obligation to record reasons as to why it is not possible to keep husband and wife at one place.
>
> 9. At the time of deciding the representation of the petitioner it should also be kept in view by the authority that the State Government has taken a policy decision that as far as possible husband and wife should be allowed to work together. In view of the policy decision taken by the State Government I hereby direct the transferring authority to record reasons as to why it is not possible to keep husband and wife together at one place i.e. Sheoganj while deciding the representation.
>
> 10. Till representation of the petitioner is decided the respondents are hereby restrained from interfering with the functioning of the petitioner at Sheoganj in pursuance of order dated 6.12.1995 (Anx.17) and the impugned order dated 18.6.1996 Anx.18 to the writ petition shall be kept in abeyance. After decision of the representation of the petitioner the stay order shall automatically come to an end without reference to the Bench."

With reference to the observations supra, learned counsel for the petitioner was posed to a question if the petitioner has made any representation to the authorities concerned? Learned counsel submitted on instructions that the petitioner may be permitted to make such representation. This Court is clearly of opinion that the proposition as suggested on behalf of the petitioner now at this stage cannot be accepted. If there was any grievance of the petitioner in relation to his posting and of any personal difficulty, nothing prevented him from making a proper representation to the authorities concerned and it cannot be assumed that the authorities would have turned a blind eye to the representation, if so made. Having not made any such representation and having taken up this litigation first before the Tribunal and now in this writ petition, the suggestion as coming forth now at this stage to permit the petitioner to make representation does not carry substance nor this Court is inclined to make any further observation in favour of the petitioner in this case except clarifying that the petitioner is free to make representation in accordance with law and the authorities are also free to decide the same in accordance with law; but no writ, order, or direction in that regard are requisite.

Even in relation to the transfer in mid-academic session, there is not shown any such rule that prohibits transfers in mid-

academic session or whereby the employer is obliged to make a transfer order only at a particular time in a year.

The Tribunal has not committed any error or illegality in rejecting the appeal filed by the petitioner. There is no ground for interference.

The writ petition is, therefore, rejected.

(DINESH MAHESHWARI),J.

MK
Mohan